

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE ALTA MESA RESOURCES, INC.
SECURITIES LITIGATION

Case No. 4:19-cv-00957

Judge George C. Hanks, Jr.

THIS DOCUMENT RELATES TO:

CASE NO. 4:22-CV-01189

CASE NO. 4:22-CV-02590

**APPENDIX TO DEFENDANTS' OPPOSITION TO
DIRECT ACTION PLAINTIFFS' MOTION TO PARTIALLY EXCLUDE
THE TESTIMONY OF CHARLES WHITEHEAD**

In accordance with Court Procedure 7(B)(3), Moving Defendants submit this Appendix in support of their Opposition to Direct Action Plaintiffs' Motion to Partially Exclude the Testimony of Charles Whitehead, which is filed concurrently herewith. Moving Defendants rely on the following evidence to support their motion:

Ex.	Description
1.	Excerpts of the Deposition of Charles Whitehead taken on November 17, 2023

Dated: January 19, 2024

Respectfully submitted,

By /s/ J. Christian Word
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CERTIFICATE OF SERVICE

I certify that on January 19, 2024, a true and correct copy of the foregoing document was filed with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to all counsel of record.

/s/ J. Christian Word

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EXHIBIT 1

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

)
IN RE ALTA MESA RESOURCES,)
) Case No.
INC. SECURITIES LITIGATION)
-----) 4:19-cv-00957

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VIDEOTAPED DEPOSITION OF
CHARLES WHITEHEAD
November 17, 2023
9:12 a.m.

Via Zoom Remote Conferencing

Reported by: Marsi Koehl, CCR-B-2424

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C O N T E N T S
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E X H I B I T S

Exhibit No.	Description	Page
Exhibit 0832	Expert Report of Professor Charles Whitehead	20
Exhibit 0833	15 U.S.C.A. Section 78t	129
Exhibit 0834	G.A. Thompson & Co. v. Partridge	138

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1 industry but like any industry you're going
2 to have some that perform and some that
3 don't perform as well. So I don't view this
4 as an industry, actually, neither does
5 Mr. Klausner. He -- his data breaks it out
6 this way, but he doesn't present it this
7 way. He's presenting it as a single SPAC.
8 In fact, I believe he ends up using
9 averages.

10 But You have to dig into it to realize
11 that, in fact, his averages are reflecting
12 different types of sponsors. So, no, I
13 don't understand this to be anything other
14 than a single SPAC industry.

15 BY MR. PELLER:

16 Q. And then I think Trig may have gone into
17 this with you a little before, but you didn't look
18 into whether any of the SPACs listed in appendix D
19 have been, for example, investigated by the
20 Securities Exchange Commission, correct?

21 MS. BLADOW: Objection.

22 THE WITNESS: That's correct.

23 BY MR. PELLER:

24 Q. And you haven't looked into whether any of
25 the SPACs listed in appendix D have faced criminal

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1 inquiries from the Department of Justice, correct?

2 MS. BLADOW: Objection.

3 THE WITNESS: That's correct.

4 BY MR. PELLER:

5 Q. Okay. So, for example, you include Nikola,
6 right, in appendix D? It's number 59.

7 A. Yes.

8 Q. And was the CEO of Nikola convicted of
9 criminal securities fraud?

10 A. I don't know.

11 Q. How can you include a population to derive
12 industry custom and practice for disclosures, which
13 is what I believe you're trying to do here, without
14 determining whether certain members of that
15 population actually violated disclosure laws?

16 A. So, again, we're providing custom and
17 practice as to the disclosures that were actually
18 made and the way in which they were presented. We're
19 not speaking to any sort of inside information or
20 outside the scope of the disclosure.

21 Whether or not the particular disclosures
22 were, you know, in terms of inside information -- I
23 think this is something we talked earlier about to
24 Trig. Whether or not the inside disclosures were --
25 whether there's inside information that speaks to the

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1 way in which the disclosures were prepared.

2 Q. I guess I just don't understand the point or
3 the usefulness of a survey of disclosure practices
4 that doesn't take into account that some of the
5 members of the population may have been violating
6 disclosure laws. It's hard for me to square. It
7 would be sort of like take a survey of the speed at
8 which people driving on a highway without excluding
9 the people who are breaking the speed limit. I mean,
10 I don't get it. Can you explain it?

11 A. Well, let's use your analogy. If I want to
12 understand the speed at which people are driving on
13 the highway, I want to understand the speed at which
14 all the people are driving on the highway.

15 And so on that basis, I would assess without
16 regard to speed limits, right, what the different --
17 what the different speeds are in order to determine
18 overall what we understand the speeds to be. In
19 fact, I'm sure you know, there are studies that
20 actually do this. And they find that average speeds
21 are, in fact, above the speed limit.

22 I want to take a step back, though, to your
23 other point though about disclosure issues. You
24 know, you mentioned Nikola.

25 Are you representing that they -- the CEO

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1 was found to have violated disclosures as it related
2 to target projections? I'm not aware of anybody in
3 this group has that type of problem. And so to that
4 extent I don't know that any of the information in
5 here is addressed by the different things you're
6 describing, the criminal or the other proceedings.

7 Q. So it sounds like you did look into it?

8 A. No. I'm saying I'm not aware of.

9 Q. You're not aware of --

10 A. That's right.

11 Q. So if you were to become aware that there
12 were companies in the sample that had violated laws
13 with respect to financial projections, would that be
14 relevant?

15 A. I'd want to understand again the context.
16 Right? So if what you're telling me is -- first of
17 all, it wouldn't be relevant to what we were doing in
18 terms of this analysis. Right?

19 Again, in terms of this analysis we were
20 looking at the actual disclosures made and the ways
21 in which they were presented without regard to the
22 underlying -- sort of the inside information we were
23 describing this morning, whether or not in fact
24 there's other information to suggest something
25 different from what was presented in the proxy.

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1 What you're suggesting to me is there might
2 be publicly available inside information. Again,
3 we're not -- I'm not aware of this. And as I
4 mentioned this morning, I've not -- I've not seen
5 anything that suggests one way or the other as to
6 how this -- how the -- whether or not the disclosures
7 are consistent in which the projections were
8 presented.

9 But irrespective of what might be available,
10 our -- our focus here were the disclosures themselves
11 not the underlying process by which the disclosures
12 may have been made.

13 Q. Okay. You know, obviously, there's been a
14 lot of questions about this, so I don't want to beat
15 a dead horse.

16 But what value is it to the factual issues
17 and legal issues in this case as to what people do
18 about disclosures if that's completely unmoored from
19 whether that complied with the securities laws?

20 MS. BLADOW: Objection.

21 BY MR. PELLER:

22 Q. So a different way of saying it is, what
23 relevance does it have if 82.7 percent of de-SPAC
24 disclosures included financial projections if it's
25 possible that those 82.7 percent violated the

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1 securities laws?

2 A. So unless you're representing to me that
3 82.7 percent violated the securities law, the point I
4 made this morning was that one of the reasons we use
5 a very large N, a large number of samples, is to --
6 is to address the possibility of aberrations in a
7 smaller group of samples.

8 And so we have 98 in this case. And within
9 that 98, we have a significant number -- 84 percent
10 of those who provide projections include target
11 prepared projections as stated in the proxy
12 statement.

13 Let's take your example. Let's assume that
14 Nikola turned out not to be accurate. Well, that's
15 not going to change my data very much. So the idea
16 behind -- the idea behind using a large N, a large
17 dataset, was to address the general custom and
18 practice and not have it impacted by, in this case, a
19 single aberration.

20 And so unless you're saying there's an
21 industry-wide attempt, that still doesn't really go
22 to -- attempt to mislead the public, that still
23 doesn't go to, again, what it is we're doing in this
24 particular empirical analysis. What we're doing here
25 is looking at what's been provided and asking whether

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1 or not what the company did is consistent with what's
2 out there in the general public.

3 And that's all we're doing. Right? Again,
4 we're not going to that additional step I said this
5 morning to look at inside information to find out,
6 you know, the nuance of what was behind the
7 particular disclosures and the proxy. But we are
8 trying to address that type of concern by having a
9 large data set against which we're measuring custom
10 and practice.

11 Q. You testified earlier that you worked in the
12 SPAC industry?

13 A. I've been involved with SPACs. Yes.

14 Q. Involved in what manner?

15 A. So, for example, I'm currently de-SPACing.
16 I'm working with a SPAC group to de-SPAC into,
17 potentially, an agro-business.

18 Q. Okay. And are those positions listed on the
19 CV that's attached to your expert report?

20 A. No. Because, again, we're in the process of
21 doing this. I reference it in my -- in my discussion
22 up front that I'm working on SPACs. But I'm doing it
23 as me. It's not -- it's not -- I'm not employed by
24 somebody. I'm doing it as -- as me, actually. I'm
25 not working for an investment bank or a law firm.

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CERTIFICATE

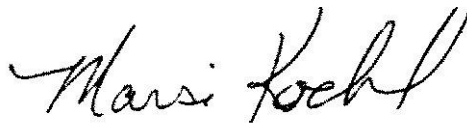
STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the colloquies, questions, and answers were reduced to typewriting under my direction; that the transcript is a true and correct record of the evidence given upon said proceeding.

I further certify that I am not a relative or employee or attorney of any party, nor am I financially interested in the outcome of this action.

This the 22nd day of November, 2023.



Marsi Koehl, CCR-B-2424

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE ALTA MESA RESOURCES, INC.
SECURITIES LITIGATION

Case No. 4:19-cv-00957

Judge George C. Hanks, Jr.

Notice of Errata – Deposition of Charles Whitehead
(November 17, 2023)

I, the undersigned, do hereby declare that I have read the deposition transcript of Charles Whitehead dated November 17, 2023, and that, to the best of my knowledge, said testimony is true and accurate, with the exception of the following changes listed below:

Page	Line(s)	Change		Reason
		From	To	
Global		S4	S-4	Transcription Error
Global		F4	F-4	Transcription Error
11	12	I don't know how that were produced.	I don't know how they were produced.	Transcription Error
18	13	The principle condition	The principal condition	Transcription Error
29	11	industry, which tie into	industry, which ties into	Transcription Error
33	11	also observe.	also observe?	Transcription Error
48	11	in the variation figures.	in the various figures.	Transcription Error
62	19-20	whatever we're not coming across it	whatever reason we're not coming across it	Transcription Error
73	23-24	There were that many.	There were not that many.	Transcription Error

Page	Line(s)	Change		Reason
		From	To	
78	24-25	methodology – at least five.	methodology, perhaps it should have said at least five.	Transcription Error
90	10-11	but I don't that to be	but I don't understand that to be	Transcription Error
100	19	prepared financial projections used by SRI.	prepared financial projections used by SRII.	Transcription Error
109	5	do this as someone whose done his own	say this as someone who's done his own	Transcription Error
169	25	financial statements.	financial projections.	Transcription Error
196	5	reasonable rely upon advise	reasonably rely on advice	Transcription Error
203	7	I'd will reluctant	I'd be reluctant	Transcription Error
206	12	know that what's what was meant by opine	know that that's what was meant by opine	Transcription Error
208	22	they provide	they provided	Transcription Error
210	10	what the SRI folks	what the SRII folks	Transcription Error
215	3	don't recall the specific	don't recall the specifics	Transcription Error
226	24	inexperience	inexperienced	Transcription Error
228	5	a fuel review	a full review	Transcription Error
229	19	Mr. Waddell	Mr. Widell	Transcription Error

Page	Line(s)	Change		Reason
		From	To	
232	25	Mr. Waddell	Mr. Widell	Transcription Error
241	6	Mr. Waddell	Mr. Widell	Transcription Error
248	22	for prefaces of the CapEx	for purposes of the CapEx	Transcription Error
255	2	or he doing it	or he is doing it.	Transcription Error
266	24-25	The Professor Badawi	Professor Badawi	Transcription Error
270	7	as a single SPAC.	as a single SPAC industry.	Transcription Error
277	19	all things I've done with trying	all things that I've done in connection with trying	Transcription Error
277	21	in the Europe	in Europe	Transcription Error

I declare under penalty of perjury that the foregoing is true and correct.

Date:

12/21/2023

Signed:

